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BMOC BOYS AND
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About the Warren Institute

The Chief Justice Earl Warren Institute on Law and Social Policy is a multidisciplinary, collaborative venture to produce research, research-based policy prescriptions and curricular innovation on the most challenging civil rights, education, criminal justice, family and economic security, immigration and healthcare issues facing California and the Nation.

THE FEDERAL SECURE COMMUNITIES PROGRAM & YOUNG MEN OF COLOR IN CALIFORNIA

by Aarti Kohli & Lisa Chavez

Low-income young men and boys of color face significant challenges as they navigate social and community environments that provide limited opportunities for success. This issue brief examines the special challenges faced by immigrant boys, young men, and their families caught in the crosshairs of U.S. immigration policy and politics. Scholars, advocates and policymakers have long been aware that reform is needed in education, health care and criminal justice institutions in order to broaden opportunities for these young men and boys. As stakeholder groups attempt to assess needed systemic changes, they increasingly confront an unexpected issue: immigration detention and deportation under the Federal Secure Communities Program, either of the young men themselves, or perhaps of a parent or family member.

As the state with the largest foreign-born population, California has been on the front lines of many immigration issues and is currently facing a crisis because of federal enforcement policies, specifically a program named Secure Communities. Secure

Communities is a program in which fingerprints of individuals detained by local police are collected at county jails and sent to the Department of Homeland Security (DHS) for an immigration check in addition to the usual criminal background checks with the FBI. This federal program is active in more than 90% of the jails nationwide and is projected to be in every jail and prison in the country by 2013; it is active in all California jails. More than 1 million people have been targeted as potentially deportable since the program began in late 2008.¹

A review of the applicable administrative memoranda and statements from DHS officials indicate that the primary goal of the program was to identify and subsequently deport serious violent offenders.² In fact, during the 2012 presidential debates, President Obama indicated that the focus of the administrative approach under the law was to zero in on “criminals.”³ Our review indicates, however, that in practice the federal government has been referring to individuals detained under the program as “criminal aliens” despite the

1. U.S. Immigration & Customs Enforcement, *Secure Communities*, ICE website, http://www.ice.gov/secure_communities/ (last visited Nov. 29, 2012). *Secure Communities: IDENT/IAFIS Interoperability Monthly Statistics through Oct. 31, 2012*, U.S. Immigration and Customs Enforcement, retrieved from http://www.ice.gov/doclib/foia/sc-stats/nationwide_interop_stats-fy2013-to-date.pdf. (The number of Alien Ident L1 and L2/3 matches total to 1,172,516.)

2. *Secure Communities Oversight Before the Subcom. on Immigration Policy and Enforcement of the H.Comm. on the Judiciary 112th Cong.* (2011).

3. Remarks of Pres. Barack Obama, Second Presidential Debate, Oct. 16, 2012. “What I’ve also said is if we’re going to go after folks who are here illegally, we should do it smartly and go after folks who are criminals, gang bangers, people who are hurting the community...” available at <http://www.debates.org/index.php?page=october-1-2012-the-second-obama-romney-presidential-debate>

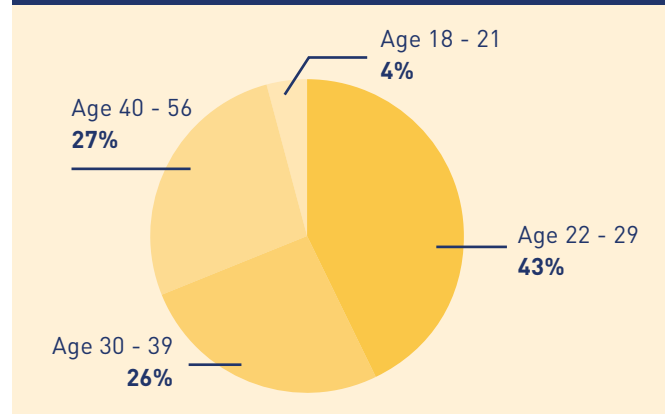
fact that its own data show that approximately 25% have never been convicted of any offense and the vast majority were charged with non-violent lower level offenses. In response to criticism about the overly broad implementation of Secure Communities, DHS issued new guidelines for local law enforcement in December 2012.⁴ These guidelines ostensibly identify the categories of people who should be held for immigration authorities. Yet, the guidelines contain vague and broad categories of crimes as well as a list of immigration violations such as illegal entry that would continue to send low-level or non-criminals to federal authorities for detention and deportation.

California has the largest share of people who are placed in detention and deportation as a result of Secure Communities. More than one-third of the million people who have been identified as deportable under Secure Communities are from California.⁵ In this brief, the Warren Institute examines California Secure Communities data⁶ in order to get a clearer picture of who is affected by immigration enforcement in the state.

DATA ANALYSIS

Not surprisingly, the vast majority of individuals sent to immigration authorities because of an encounter with local law enforcement are men of color (88%). Among these men of color, almost half are under the age of 30 (*see figure 1*). Some are legal permanent residents who were brought here as children and committed a crime that makes them deportable. However, the categories of crimes and illegal

FIGURE 1 | Age Distribution of Men of Color Arrested by ICE in California



infractions that can place individuals in deportation are broad,⁷ for example, almost all drug offenses, including simple possession or public use, can place a young man in deportation proceedings. Others are undocumented but most likely have lived in the United States for a significant part of their lives. The government's own data reveals that almost 60% of the unauthorized immigrant population arrived before 2000⁸ and approximately 85% arrived before 2005 suggesting that many of these undocumented people have established roots, started families, and become parents of native-born children in California communities.

One important indication of the inextricable links between men of color facing deportation and California are their family ties; almost 60% reported having a US citizen child. The federal government does not collect information on non-US citizen children who live in the U.S.,

4. Memorandum from John Morton, U.S. Immigration and Customs Enforcement Agency, *Civil Immigration Enforcement: Guidance on the Use of Detainers in the Federal, State, Local, and Tribal Criminal Justice Systems* (Dec. 2012) available at <http://www.ice.gov/doclib/detention-reform/pdf/detainer-policy.pdf>

5. U.S. Immigration and Customs Enforcement, *Nationwide IDENT/IAFIS Interoperability Report 2008- 2012* available at http://www.ice.gov/doclib/foia/sc-stats/nationwide_interoperability_stats-fy2012-to-date.pdf

6. The findings in this report are based on a national sample of data obtained pursuant to a partial settlement of a Freedom of Information Act lawsuit brought by the National Day Labor Organizing Network, the Center for Constitutional Rights, and the Kathryn O. Greenberg Immigration Justice Clinic at the Benjamin N. Cardozo School of Law (collectively "the plaintiffs") against several federal agencies involved in administering Secure Communities, most significantly the U.S. Immigration Customs and Enforcement agency. Per the settlement, the federal government provided plaintiffs with data on a sample of IDENT matches (Secure Communities fingerprint queries that resulted in "hits" in the Department of Homeland Security's databases) between

October 1, 2008 and January 31, 2010. There were two primary sources of data: ICE databases (ENFORCE, EID, IIDS, and GEMS), and Executive Office of Immigration Review (EOIR) Case Access System (CASES). Nearly 90 individuals in the national sample were arrested by ICE in California. Among these, 76 (88%) were men of color (that is, men whose country of origin was in Latin America, Asia, or Africa). The analyses in this brief focuses on this subset of California ICE arrestees. For a detailed description of the sample and data, see our previously published report *Secure Communities by the Numbers* (2011) available at www.warreninstitute.org.

7. In addition to minor drug offenses, petty theft, shoplifting, jumping a subway turnstile, pulling someone's hair (a battery in some states) have all been classified as aggravated felonies. Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 *Harv. L. Rev.* 1936, 1939-41 (2000).

8. U.S. Dept. of Homeland Security, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*, M.Hoefer, N. Rytina, and B. Baker, March 2012 available at <http://www.dhs.gov/estimates-unauthorized-immigrant-population-residing-united-states-january-2011>

consequently, it is likely that the share of those with children in California is higher than estimated. Having a parent, sibling or an uncle identified by local police and then deported is likely to heighten the experience of trauma already prevalent among immigrant boys of color who live in low-income communities. Also, community awareness that local police are involved in immigration enforcement is likely to increase mistrust of law enforcement and heighten feelings of fear and anxiety. In addition to the economic deprivation of the primary breadwinner's deportation, parental separation can lead to negative outcomes on the social and emotional well-being of children.

FIGURE 2 | U.S. Citizen Children of Men of Color Arrested by ICE in California

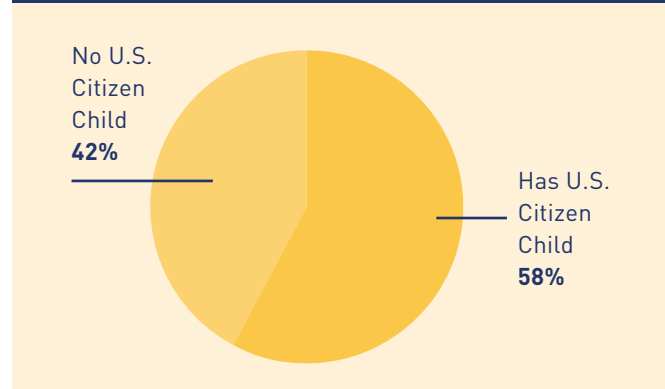
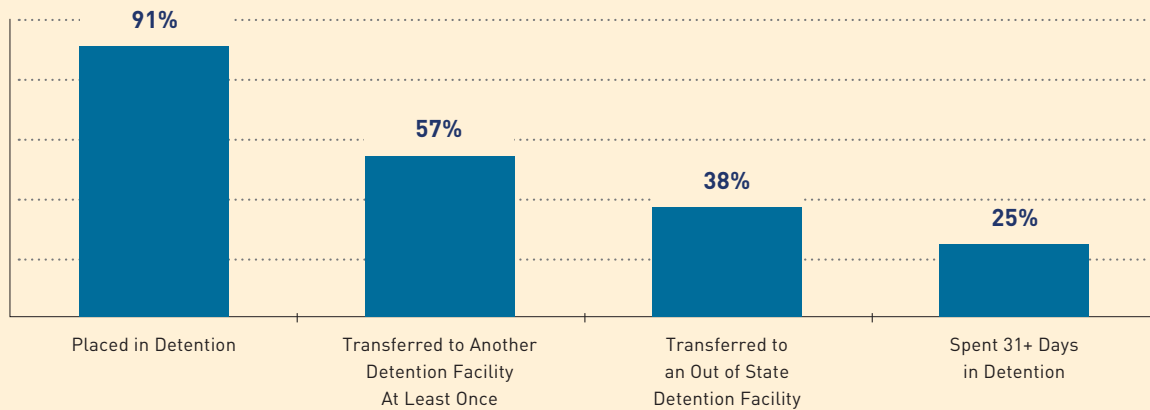


FIGURE 3 | ICE Detention of Men of Color Arrested by ICE in California



DISCUSSION

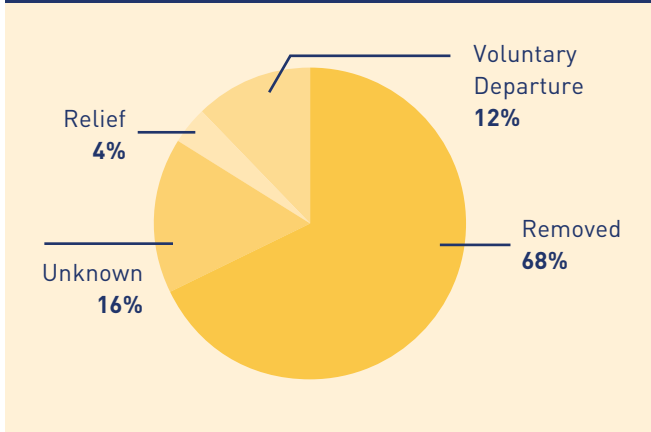
The process for those facing deportation and their families is often jarring. One minute a young man may be arrested for driving without a license, another he is in immigration jail, sometimes in another state, facing deportation (*see Figure 3*). The vast majority, 91%, of men of color arrested by immigration authorities under Secure Communities are placed in immigration detention, the equivalent of criminal incarceration, except that there is no appointed lawyer. Nationwide, only approximately 15% of detained individuals have a lawyer. Immigration law is complex and avenues

for relief from deportation are limited making it very difficult for individuals to win their cases without a lawyer.⁹ As Figure 4 shows, 80% of the men of color who are placed in the immigration system in California are formally deported or encouraged to sign voluntary departure documents. Many leave behind children, spouses, parents, siblings and other close family members. Although there has been much opposition to Secure Communities and even legislation attempting to limit deportations to serious, violent offenders in California,¹⁰ the fracturing of families will continue as long as federal enforcement is intertwined with local law enforcement and targets a broad array of

9. Center for Migration Studies, *The US Immigration Court System: Workload and Due Process Challenges*, Feb. 21, 2012 available at <http://cmsny.org/2012/02/21/osuna-on-us-immigration-court-system>

10. Elise Foley, Huff. Post *TRUST Act Vetoed: California Gov. Jerry Brown Calls Limits On Immigration Enforcement 'Flawed'* Oct. 1, 2012 available at http://www.huffingtonpost.com/2012/10/01/trust-act-veto-jerry-brown_n_1928444.html. The Governor expressed support for the goals of the TRUST Act in his veto message and said that he will work with the legislature to address his concerns.

FIGURE 4 | Outcomes for Men of Color Arrested by ICE in California



noncitizens regardless of the stated federal focus on high-level criminals. This harsh reality presents significant challenges for those seeking to improve opportunities for immigrant youth.

While comprehensive immigration reform is the ultimate long-term solution for many immigrant families, Congress has not yet taken action on this issue and therefore no immediate solution exists. However, there are state and local level interventions that could help support young men and boys whose lives are affected by immigration enforcement in the short run. First, it is important for front-line workers such as teachers, counselors, probation officers, social workers, doctors etc. to be aware of the persistent fear and anxiety that can be caused by family separation due to deportation. Secondly, state and county institutions such as schools and youth service agencies must

Proposed Statewide Standard for Secure Communities Implementation

California Assemblymember Tom Ammiano has re-introduced the TRUST Act (Transparency and Responsibility Using State Tools), AB 4, a bill designed to address the overbroad reach of the Secure Communities program. The legislation will create a statewide standard identifying when local police should detain individuals for extra time, beyond when they would otherwise be released, for immigration authorities. The TRUST Act focuses limited law enforcement resources on detaining individuals with serious or violent convictions as opposed to individuals without criminal records or those arrested for lower level offenses.

institute targeted programs that address the economic and housing needs of youth whose parents have been deported. For those who are witnessing the harmful impacts of detention and deportation in California, it would be helpful to document and raise concerns with elected officials and law enforcement, particularly as the detention and deportation system continues to grow. While the Department of Homeland Security may view deportation as an answer, California is learning that, for those who are left behind, it is often only the beginning of the problem.

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